APPENDIX A

Internal Revenue Code of 1939:

CHAPTER 1—INCOME TAX

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SUBCHAPTER B—GENERAL PROVISIONS

Part I—Rates of Tax

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SEC. 13. TAX ON CORPORATIONS IN GENERAL.

(a) [as amended by Sec. 201 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 105(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Definitions.*—For the purposes of this chapter—

(1) *Adjusted net income.*—The term "adjusted net income" means the net income minus the credit provided in section 26(a), relating to interest on certain obligations of the United States and Government corporations.

(2) *Normal-tax net income.*—The term "normal-tax net income" means the adjusted net income minus the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26(e) and minus the credit for dividends received provided in section 26(b).

(b) [as amended by Sec. 101(a) of the Second Revenue Act of 1940, c. 757, 54 Stat. 974] *Imposition of Tax.*—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation the normal-tax net income of which is more than $25,000 (except a corporation subject to the tax imposed by section 14, section 231(a), Supplement G, or Supplement Q) whichever of the following taxes is the lesser:

(1) [as amended by Sec. 103(a) of the Revenue Act of 1941, c. 412, 55 Stat. 687] *General rule.*—A tax of 24 per centum of the normal-tax net income; or

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(26 U.S.C. 1952 ed., Sec. 13.)

SEC. 15 [as amended by Sec. 105(b) of the Revenue Act of 1942, *supra*]. SURTAX ON CORPORATIONS.

(a) *Corporation Surtax Net Income.*—For the purposes of this chapter, the term "corporation surtax net income" means the net income minus the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26(e) and minus the credit for dividends received provided in section 26(b) (computed by limiting such credit to 85 per centum of the net income reduced by the credit for income subject to the tax imposed by Subchapter E of Chapter 2 in lieu of 85 per centum of the adjusted net income so reduced), and minus, in the case of a public utility, the credit for dividends, paid on its preferred stock provided in section 26(h). * * *

(b) *Imposition of Tax.*—There shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every corporation (except a Western Hemisphere Trade Corporation as defined in section 109, and except a corporation subject to the tax imposed by section 231(a), Supplement G, or Supplement Q), a surtax as follows:

(1) *Surtax net incomes not over $25,000.*—Upon corporation surtax net incomes not over $25,000, 10 per centum of the amount thereof.

(2) *Surtax net incomes over $25,000 but not over $50,000.*—Upon corporation surtax net incomes over $25,000, but not over $50,000, $2,500, plus 22 per centum of the amount of the corporation surtax net income over $25,000.

(3) *Surtax net incomes over $50,000.*—Upon corporation surtax net incomes over $50,000, 16 per centum of the corporation surtax net income.

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(26 U.S.C. 1952 ed., Sec. 15.)

SEC. 26. CREDITS OF CORPORATIONS.

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

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(e) [as amended by Sec. 105(d) of the Revenue Act of 1942, *supra*, and Sec. 202(c) of the Revenue Act of 1943, c. 63, 58 Stat. 21] *Income Subject to Excess-Profits Tax.*— In the case of any corporation subject to the tax imposed by Subchapter E of Chapter 2, an amount equal to its adjusted excess-profits net income (as defined in section 710 (b)). In the case of any corporation computing such tax under section 721 (relating to abnormalities in income in the taxable period), section 726 (relating to corporations completing contracts under the Merchant Marine Act of 1936), section 731 (relating to corporations engaged in mining strategic minerals), or section 736(b) (relating to corporations with income from long-term contracts), the credit shall be the amount of which the tax imposed by such subchapter is 95 per centum. For the purpose of the preceding sentence the term "tax imposed by Subchapter E of Chapter 2" means the tax computed without regard to the limitation provided in section 710(a)(1)(B) (the 80 per centum limitation), without regard to the credit provided in section 729(c) and (d) for foreign taxes paid, and without regard to the adjustments provided in section 734. This subsection shall not apply to any corporation exempt from such tax under section 725 or section 727.

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(26 U.S.C. 1952 ed., Sec. 26.)

CHAPTER 2—ADDITIONAL INCOME TAXES

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SUBCHAPTER E—EXCESS PROFITS TAX

[As added by Sec. 201 of the Second Revenue Act of 1940, *supra*, which provided that the new subchapter may be cited as the "Excess Profits Tax Act of 1940"].

SEC. 710. IMPOSITION OF TAX.

(a) [as amended by Sec. 201 (a) of the Revenue Act of 1941, *supra*, and Sec. 202 of the Revenue Act of 1942, *supra*] *Imposition.*—

(1) *General rule.*—There shall be levied collected, and paid, for each taxable year, upon the adjusted excess-profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) a tax equal to whichever of the following amounts is the lesser:

(A) [as amended by Sec. 202 (a) of the Revenue Act of 1943, *supra*] 95 per centum of the adjusted excess-profits net income, or

(B) an amount which when added to the tax imposed for the taxable year under Chapter 1 (other than section 102) equals 80 per centum of the corporation surtax net income, computed under section 15 or Supplement G, as the case may be, but without regard to the credit provided in section 26 (e) (relating to income subject to the tax imposed by this subchapter).

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(b) [as amended by Sec. 2 (a) of the Excess Profits Tax Amendments of 1941, c. 10, 55 Stat. 17, and by Sec. 204 (a) of the Revenue Act of 1942, *supra*] *Definition of Adjusted Excess Profits Net Income.*—As used in this section, the term "adjusted excess profits net income" in the case of any taxable year means the excess profits net income (as defined in Section 711) minus the sum of:

(1) [as amended by Sec. 204 of the Revenue Act of 1943, *supra*] *Specific exemption.*—A specific exemption of $10,000;

(2) *Excess profits credit.*—The amount of the excess profits credit allowed under Section 712; and

(3) *Unused excess profits credit.*—The amount of the unused excess profits credit adjustment for the taxable year, computed in accordance with subsection (c).

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(26 U. S. C. 1952 ed., Sec. 710.)

SEC. 711. EXCESS PROFITS NET INCOME.

(a) *Taxable Years Beginning After December 31, 1939.*—The excess profits net income for any taxable year beginning after December 31, 1939, shall be the normal-tax net income, as defined in section 13 (a) (2), for such year except that the following adjustments shall be made:

(1) *Excess profits credit computed under income credit.*—If the Excess profits credit is computed under section 713, the adjustments shall be as follows:

(A) [as amended by Sec. 206 (a) of the Revenue Act of 1942, *supra*] *Income Subject to Excess Profits Tax.*—In computing such normal-tax net income the credit provided in section 26 (e) (relating to income subject to the tax imposed by this subchapter) shall not be allowed;

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(2) *Excess profits credit computed under invested capital credit.*—If the excess profit credit is computed under section 714, the adjustments shall be as follows:

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(26 U.S.C. 1952 ed., Sec. 711.)

SEC. 712 [as amended by Sec. 13 of the Excess Profits Tax Amendments of 1941, *supra*]. EXCESS PROFITS CREDIT—ALLOWANCE.

(a) *Domestic Corporations.*—In the case of a domestic corporation which was in existence before January 1, 1940, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed. * * *

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(26 U. S. C. 1952 ed., Sec. 712.)

SEC. 713 [as amended by Sec. 4 of the Excess Profits Tax Amendments of 1941, *supra*, and Sec. 228 (e) (2) of the Revenue Act of 1942, *supra*]. EXCESS PROFITS CREDIT —BASED ON INCOME.

(a) *Amount of Excess Profits Credit.*—The excess profits credit for any taxable year, computed under this section, shall be—

(1) *Domestic corporations.*—In the case of a domestic corporation—

(A) 95 per centum of the average base period net income.

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(b) *Base Period.*—

(1) *Definition.*—As used in this section the term "base period"—

(A) If the corporation was in existence during the whole of the forty-eight months preceding the beginning of its first taxable year under this subchapter, means the period commencing with the beginning of its first taxable year beginning after December 31, 1935, and ending with the close of its last taxable year beginning before January 1, 1940; and

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(26 U. S. C. 1952 ed., Sec. 713.)

SEC. 714 [as amended by Sec. 205 of the Revenue Act of 1943, *supra*]. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.

The excess profits credit, for any taxable year, computed under this section, shall be the amount shown in the following table:

If the invested capital for the taxable year, determined under section 715 is:	The credit shall be:
Not over $5,000,000.	8% of the invested Capital.

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(26 U. S. C. 1952 ed., Sec. 714.)

SEC. 722 [as amended by Sec. 222 of the Revenue Act of 1942, *supra*]. GENERAL RELIEF—CONSTRUCTION AVERAGE BASE PERIOD NET INCOME.

(a) *General Rule.*—In any case in which the taxpayer establishes that the tax computed under this subchapter (without the benefit of this section) results in an excessive and discriminatory tax and establishes what would be a fair and just amount representing normal earnings to be used as constructive average base period net income for the purposes of an excess profits tax based upon a comparison of normal earnings and earnings during an excess profits tax period, the tax shall be determined by using such constructive average base period net income in lieu of the average base period net income otherwise determined under this subchapter.

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(b) *Taxpayers Using Average Earnings Method.*—The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a taxpayer entitled to use the excess profits credit based on income pursuant

to section 713, if its average base period net income is an inadequate standard of normal earnings because—

(1) in one or more taxable years in the base period normal production, output, or operation was interrupted or diminished because of the occurrence, either immediately prior to, or during the base period, of events unusual and peculiar in the experience of such taxpayer,

(2) the business of the taxpayer was depressed in the base period because of temporary economic circumstances unusual in the case of such taxpayer or because of the fact that an industry of which such taxpayer was a member was depressed by reason of temporary economic events unusual in the case of such industry,

(3) the business of the taxpayer was depressed in the base period by reason of conditions generally prevailing in an industry of which the taxpayer was a member, subjecting such taxpayer to

(A) a profits cycle differing materially in length and amplitude from the general business cycle, or

(B) sporadic and intermittent periods of high production and profits, and such periods are inadequately represented in the base period,

(4) the taxpayer, either during or immediately prior to the base period, commenced business or changed the character of the business and the average base period net income does not reflect the normal operation for the entire base period of the business. * * * or

(5) of any other factor affecting the taxpayer's business which may reasonably be considered as resulting in an inadequate standard of normal earnings during the base period and the application of this section to the taxpayer would not be inconsistent with the principles underlying the provisions of this subsection, and with the conditions and limitations enumerated therein.

(c) *Invested Capital Corporations, Etc.*—The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a taxpayer, not entitled to use the excess profits credit based on income pursuant to section 713, if the excess profits credit based on invested capital is an inadequate standard for determining excess profits, because—

(1) the business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income,

(2) the business of the taxpayer is of a class in which capital is not an important income-producing factor, or

(3) the invested capital of the taxpayer is abnormally low.

In such case for the purposes of this subchapter, such taxpayer shall be considered to be entitled to use the excess profits credit based on income, using the constructive average base period net income determined under subsection (a). * * *

(d) *Application for Relief Under This Section.*—The taxpayer shall compute its tax, file its return, and pay its tax under this subchapter without the application of this section, except as provided in section 710 (a) (5). The benefits of this section shall not be allowed unless the taxpayer within the period of time prescribed by section 322 and subject to the limitation as to amount of credit or refund prescribed in such section makes application therefor in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. If a constructive average base period net income has been determined under the provisions of this section for any taxable year, the Commissioner may, by regulations approved by the Secretary, prescribed the extent to which the limitations prescribed by this subsection may be waived

for the purpose of determining the tax under this subchapter for a subsequent taxable year.

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(g) [as added by Sec. 206 of the Revenue Act of 1943, *supra*] The Commissioner shall compile for each fiscal year beginning after June 20, 1941, by internal revenue districts, and alphabetically arranged, all cases in which relief has been allowed during such year under the provisions of this section by the Commissioner and by The Tax Court of the United States, as the case may be. Such compilation shall contain the name and address of each taxpayer to which relief has been so allowed, the business in which the taxpayer is engaged, the amount of the excess profits credit before such allowance, the increase in such credit claimed, the increase in such credit allowed, and the amount of the gross reduction in the tax under this subchapter and of the gross increase in the tax under Chapter 1, which results from the operation of this section. In the case of relief allowed by The Tax Court of the United States, the Commissioner shall also set forth the data previously reported under this subsection with respect to relief previously allowed in such case by the Commissioner. Such compilation shall be published in the Federal Register.

(26 U. S. C. 1952 ed., Sec. 722.)

SEC. 728. MEANING OF TERMS USED.

The terms used in this subchapter shall have the same meaning as when used in Chapter 1.

(26 U. S. C. 1952 ed., Sec. 728.)

SEC. 729. LAWS APPLICABLE.

(a) *General Rule.*—All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, insofar as not inconsistent with this

subchapter, be applicable in respect of the tax imposed by this subchapter.

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(26 U. S. C. 1952 ed., Sec. 729.)

Treasury Regulations 111, Promulgated Under the Internal Revenue Code of 1939. October 28, 1943:

Sec. 29.26-4 [as amended by T. D. 5401, 1944 Cum. Bull. 204, 206]. *Credit for Income Subject to Excess Profits Tax.*—A credit is provided in section 26 (e) allowable under sections 13 (a) (2) and 15 (a) in computing normal tax net income and surtax net income, respectively. See section 108 as to certain fiscal years. The credit is allowed only in the case of corporations subject to the excess profits tax imposed by Subchapter E of Chapter 2. The credit does not apply to a corporation exempt from such tax under section 725 (relating to personal service corporations) or section 727 (relating to corporations exempt from excess profits tax).

In general, the credit is the amount of the corporation's adjusted excess profits net income, as defined in section 710 (b). In the case of the following corporations, however, the credit with respect to taxable years beginning prior to January 1, 1944, is an amount of which the excess profits tax imposed by Subchapter E of Chapter 2 is 90 percent, and, with respect to taxable years beginning after December 31, 1943, is an amount of which such excess profits tax is 85 percent:

(a) Corporations computing such excess profits tax under section 721, relating to abnormalities in income in the taxable period.

(b) Corporations computing such excess profits tax under section 726, relating to corporations completing contracts under the Merchant Marine Act of 1936.

(c) Corporations computing such excess profits tax under section 731, relating to corporations engaged in mining strategic minerals.

(d) Corporations computing such excess profits tax under section 736 (b), relating to corporations with income from long-term contracts.

For the purpose of the credit in the case of such corporations, the excess profits tax (upon which the credit is to be computed) is the tax imposed under subchapter E of chapter 2 computed without regard to the limitation of tax to 80 percent of surtax net income, as provided in section 710 (a) (1). The excess profits tax is also determined for this purpose without regard to any credit for foreign taxes allowed in section 729 (c) and (d) and without regard to the adjustments provided in section 734.

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If the excess profits tax of a corporation imposed by Subchapter E of Chapter 2 for a taxable year beginning after December 31, 1941, is finally determined by the use of the excess profits credit based upon constructive average base period net income determined under section 722, or if the corporation is entitled to and used such excess profits credit in the computation of its excess profits tax for such year without the necessity of filing an application for relief on Form 991 (revised January, 1943) under section 722 (see section 35.722-5 (d) of Regulations 112), the credit under section 26 (e) allowable in computing the normal tax and surtax shall be the amount of the corporation's adjusted excess profits net income, as defined in section 710 (b), computed with the use of the excess profits credit based upon constructive average base period net income. However, if such corporation computes its excess profits tax as provided in (*a*), (*b*), (*c*), or (*d*) of this section, the credit under section 26 (e) with respect to taxable years beginning

prior to January 1, 1944, shall be the amount of which the excess profits tax imposed by Subchapter E of Chapter 2, computed as provided by the second paragraph of this section, is 90 per cent, and with respect to taxable years beginning after December 31, 1943, shall be the amount of which such excess profits tax so computed is 95 percent.

Treasury Regulations 112, Promulgated Under the Internal Revenue Code of 1939, January 25, 1944:

Sec. 35.722-2 *Constructive Average Base Period Net Income.*—

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(c) *Excess profits credit based on constructive average base period net income.*—For any excess profits tax taxable year for which a constructive average base period net income has been determined under the provisions of section 722 and of this section, the excess profits credit based on income shall be an amount equal to—

(1) 95 percent of the constructive average base period net income determined under section 722;

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